

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

EARL D. WARNER

Criminal No. 12-107

GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION IN LIMINE IN RE: DISC #1

AND NOW comes the United States of America, by its attorneys, David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Carolyn J. Bloch, Assistant United States Attorney for said district, and respectfully submits the following in response to Defendant's Motion In Limine Re: Disc #1:

1. The defendant, through his motion in limine, articulates an objection to certain images the government intends to offer in its case-in-chief on the basis that those images are cumulative and, as such, unfairly prejudicial to the defendant.

2. The defendant has expressed particular objection to the admission of certain specific images which relate to Count Three of the Superseding Indictment.

3. In responding to Defendant's motion, the government has re-reviewed each of the still images

(Government's Exhibit 3.1 through 3.28) referenced above. Said images were produced on or about June 12, 2011, from at or about 9:24 a.m. through at or about 9:49 a.m., and depict victim child "FW" in a photographic series extending over the course of 25 minutes. "FW" is first depicted clothed in a child's Steeler's cheerleading outfit. As time elapses, "FW" is progressively posed in positions which are more sexually explicit. Ultimately, she is depicted naked with her genitals fully exposed.

4. Although a few of the above-referenced photographs, when viewed in sequence, depict similar, but not identical content (i.e., "FW"'s state of undress and position of legs), it is the full sequence of photographs that accurately portrays the real time production of the charged sexually exploitive images and, in turn, is the government's best evidence of the offense charged at Count Three.

5. Similarly, the full series of images charged in Counts One, Two, and Four, when viewed in sequence, most accurately depict the production of child pornography charged at each of those counts.

6. The government submits that relevant images which do not depict the child victims engaged in sexually explicit conduct are not, in light of the other evidence, particularly prejudicial to the defendant, but said images are probative of

the "grooming" process and the defendant's manipulation of the individual child victims.

7. The government submits that all videos and images, that is those produced by Defendant Warner and contained on two discs provided by witness Armando Cruz and those contained on Two SanDisk memory cards seized from the defendant's home, are all intrinsic evidence of the offenses charged in the Superseding Indictment. The government further submits that the probative value of all said depictions outweighs any prejudice to the defendant stemming from their admission.

8. In keeping with the holdings in United States v. Cunningham, 694 F.3d 372 (3d Cir. 2012) and United States v. Finley, 726 F.3d 483 (3d Cir. 2013), the government has prepared a disc containing the subject images and videos for the Court's pre-trial review and analysis. The government has identified each subject image and video depicting child victims "MC", "FW", and "HE" by individual exhibit numbers to facilitate the Court in its analysis and to ensure the record is clear as to any image about which there is an objection.

9. The government submits that images which accurately portray the evolution of the sexual exploitation of the minor victims and the ultimate production of images depicting that exploitation must be admitted and shown to the

jury. That said, the government awaits the Court's review of said evidence in further preparation for trial.

Respectfully submitted,

DAVID J. HICKTON
United States Attorney

s/ Carolyn J. Bloch
CAROLYN J. BLOCH
Assistant U.S. Attorney
U.S. Post Office and Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219
(412) 894-7319 (Phone)
(412) 644-2644 (Fax)
Carolyn.Bloch@usdoj.gov
PA ID No. 53430